

5380

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188326

DATE: February 13, 1978

MATTER OF: Charles F. Rader - Waiver of Compensation Overpayment

DIGEST: Navy employee requests waiver under 5 U.S.C. § 5584 of \$115.46 overpayment of overtime for participation in sea trial. Waiver is denied since employee had participated in another sea trial three months earlier lasting one day longer than sea trial for which he was overpaid. Also, payments were made one month apart. Therefore, employee should have suspected error in overtime pay upon receiving larger payment for second and shorter sea trial and advised his payroll office.

Mr. Charles F. Rader appeals from the action of our Claims Division dated October 15, 1976, upholding the decision of the Navy Accounting and Finance Office to deny Mr. Rader's request for waiver of an overpayment in the amount of \$115.46 under 5 U.S.C. § 5584 (Supp. IV, 1974) and 4 C.F.R., chapter 1, subchapter G.

The record shows that Mr. Rader, a mechanical engineer at the Puget Sound Naval Shipyard, Bremerton, Washington, was notified on April 11, 1975, that through administrative error he had been overpaid \$115.46 for a sea trial he had participated in aboard the USS QUEENFISH in June 1973 while on temporary duty at Pearl Harbor, Hawaii. He requested waiver of this amount. His request was denied by the Navy Accounting and Finance Center by a letter dated September 10, 1975. The denial was based on the ground that Mr. Rader had been paid less overtime in connection with another sea trial which occurred in April 1973 and lasted 1 day longer than the sea trial in June 1973 for which he was overpaid. Hence, Mr. Rader should have realized that he was being overpaid when his payment for the June sea trial was larger than his payment for the April sea trial.

Mr. Rader requested reconsideration of the above denial. Mr. Rader states that he was unaware of the overpayment at the time it occurred. He further states that the sea trial form is not returned to the employee with the comptroller's calculations of money due. Therefore, he was unaware of the exact amount to which he was entitled at the end of the sea

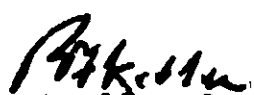
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trial. He concludes by stating that, when the payment for the second sea trial was received, he did not recall that the two sea trials had been of substantially different lengths. However, he did expect to receive a check of similar value for each sea trial.

The questions raised by Mr. Rader's request for waiver are whether a reasonably careful and prudent person under similar circumstances would have made inquiry as to the correctness of his pay and whether the record clearly establishes that the employee knew or should have known that the pay he received was more than that to which he was entitled. B-186796, September 21, 1976, and B-184182, July 22, 1976.

We believe, under the circumstances of this case, that a reasonably prudent and careful person would have realized that he was being overpaid. The two sea trials in question were only 3 months apart. Additionally, overtime payments for the two sea trials were received 1 month apart. While the employee may not have known the exact amount of overtime due from each sea trial, we believe a reasonable and prudent person would have recalled the difference of length in the sea trials and expected to receive a larger overtime payment for the longer sea trial. Thus, in light of the closeness of the two sea trials, when the employee received a larger overtime payment for the shorter sea trial, he should have suspected that he was being overpaid and advised his payroll office.

In view of the above we cannot say that the employee acted reasonably and prudently, or that he was without fault within the meaning of 5 U.S.C. § 5584(b)(1). Accordingly, the denial of Mr. Rader's request for waiver of an overpayment of \$115.46 in overtime pay is sustained.


Deputy Comptroller General
of the United States